

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

REBECCA MARTINEZ,

Plaintiff,

v.

Civ. No. 19-889 JCH/GJF

CHRISTOPHER JAMES PADILLA et al.,

Defendants.

**ORDER OVERRULING OBJECTIONS AND ADOPTING MAGISTRATE  
JUDGE’S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

This matter is before the Court on Defendants John Sanchez and Robert Gonzales’ (“Supervisory Defendants”) “Motion for Judgment on the Pleadings” (“Motion”). Doc. 24. On June 30, 2020, Magistrate Judge Gregory J. Fouratt filed his Proposed Findings and Recommended Disposition (“PFRD”) advising that the Court dismiss Count III of Plaintiff’s Complaint against them. Doc. 36. According to Judge Fouratt’s analysis, the Complaint failed to state a claim upon which relief could be granted because the Complaint lacked sufficient factual allegations to make it plausible that the Supervisory Defendants acted with deliberate indifference, which is required to sustain a § 1983 claim of supervisory liability in violation of the Eighth Amendment.

On July 9, 2020, Plaintiff filed Objections to Judge Fouratt’s PFRD. Doc. 37. These Objections, however, essentially fail to challenge any findings or recommendations made by Judge Fouratt regarding the Supervisory Defendants. Instead, “Plaintiff asks that the Court reject the Magistrate Judge’s Proposed Finding that Defendant Biddle [who was not a party to the Motion] was merely negligent when he decided to deliberately reveal confidential information about Plaintiff to other inmates, in direct violation of PREA and New Mexico Corrections Department policy.” The Court does not construe that language to be a “finding” at all but rather was used

only to provide context for the PFRD's analysis and conclusion. Furthermore, as this finding is inconsequential to the PFRD's overall conclusion, the Court will not adopt it as dispositive.


Judge Fouratt's findings concerning the Supervisory Defendants, however, are altogether a different matter. The Tenth Circuit has held "that a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." *United States v. One Parcel of Real Property, With Buildings, Appurtenances, Improvements, and Contents, Known As: 2121 East 30th Street, Tulsa Okla.*, 73 F.3d 1057, 1059 (10th Cir. 1996). The Tenth Circuit, "like numerous other circuits, [has] adopted 'a firm waiver rule' that 'provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of both factual and legal questions.'" *Id.* at 1059 (citations omitted).

Here, Plaintiff makes no objection to Judge Fouratt's conclusion that the Complaint insufficiently pled that the Supervisory Defendants acted with deliberate indifference to support a theory of supervisory liability. Nor does Plaintiff challenge his recommendation that this Court dismiss with prejudice Count III against the Supervisory Defendants. Thus, Plaintiff has waived all appellate review of the PFRD's analysis on these points.

**IT IS THEREFORE ORDERED THAT:**

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 36) is **ADOPTED**; and

2. Count III of Plaintiff's Complaint as to Defendants John Sanchez and Robert Gonzales is **DISMISSED WITH PREJUDICE**.

  
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SENIOR UNITED STATES DISTRICT JUDGE